

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

DISHON OPIYO, <i>et al.</i>)	
)	
)	
Complainants)	
)	
v.)	Case No. 22-08
)	July 30, 2009
BOLAND FARM HOMEOWNERS)	
ASSOCIATION, INC.)	
)	
Respondent)	
)	
)	

DECISION AND ORDER

The above-captioned case came before the Commission for hearing on May 20 and June 17, 2009, pursuant to Montgomery County Code ("MC Code"), Chapter 10B (1994), as amended. The hearing panel ("Panel"), having considered the testimony and evidence of record, finds, concludes and orders as follows.

I. Background

Boland Farm Homeowners Association, Inc. ("Respondent" or the "Association"), is an incorporated, five-unit homeowners association located in Germantown, Maryland. The Association was created in late 2004. The developer turned over governance of the Association to the homeowners in early 2005.

At relevant times, the five units were owned by:

- Sami Youssef – 20410 Bolland Farm Road (Lot 1)
- Anh and Chauha Pham - 20412 Boland Farm Road (Lot 2)
- Quang Tang - 20414 Boland Farm Road (Lot 3)
- Mohamed Ibrahim and Wsaida Hassanein - 20416 Boland Farm Road (Lot 4)
- Dishon and Hellen Opiyo - 20418 Boland Farm Road (Lot 5)

Originally, the Association was professionally managed by Site Realty, but soon after the homeowners took over from the developer, they decided to self-manage. Their management style was informal, getting together as needed and communicating by email. As they themselves admit, however, most of the homeowners lacked knowledge or experience in managing an association.

Complainant Dishon Opiyo ("Mr. Opiyo"), an accountant, was elected Treasurer of the Association in 2005 and he served in that capacity for several years. In early 2008, the homeowners became aware of serious failures by the Association to comply with applicable legal requirements and normal management standards. Attempts to address these failures met with finger-pointing and accusations of intentional misconduct and fraud. This in turn led to hurt feelings, mistrust, and intransigence. As a result, the Association became dysfunctional.

In May 2008, Mr. and Mrs. Opiyo (collectively, the "Opiyos" or "Complainants") filed a complaint with the Commission against the Association, alleging numerous violations of law and the Association's governing documents. CX1 at 1.¹ The Opiyos raised the following claims:

1. Respondent failed to register itself with the Commission, in violation of Section 10B-7 of the Montgomery County Code;
2. Respondent failed to maintain its corporate status in good standing;
3. Respondent failed to make its records available for inspection;
4. Respondent failed to enforce its rules and to take action on legal matters;
5. Respondent filed a fraudulent registration by misrepresenting that Mr. Opiyo was a member of the Board of Directors and by misstating Respondent's name;
6. Respondent failed to provide its members with copies of Board minutes;
7. Respondent made false claims that Mr. Opiyo was misusing its funds and it also was verbally abusing him;
8. Respondent was not maintaining the common areas in good condition;
9. Respondent was mismanaging its affairs; and,
10. Respondent failed to maintain the required insurance.

¹ "CX1" refers to Commission Exhibit 1, described below.

On August 6, 2008 the Commission accepted jurisdiction over some, but not all, the claims contained in the complaint. The Commission accepted jurisdiction only over items pertaining to the failure to make documents available and to provide information on insurance and legal matters; the failure to identify the members of the board; the failure to provide copies of minutes and documentation of the Respondent's legal status; the failure to make contracts available for inspection; improperly removing the treasurer (Mr. Opiyo) from office; the failure to call meetings; the failure to hold annual elections; and the failure of the board to elect officers. The Commission then set the matter for hearing on October 23, 2008. CX1 at 211. The parties attended a pre-hearing conference on October 15, 2008 at the direction of the Panel Chair. Following that conference, the Panel Chair ordered the parties to mediation and continued the October 15 hearing. CX1 at A-25.

Mediation never took place. The record suggests that the Opiyos failed to cooperate in arranging mediation. Mr. Opiyo later acknowledged at the hearing he did not want to mediate.

The case then proceeded to hearing. Neither party was represented by an attorney. As permitted by Md. Code Ann., Bus. Occ. & Prof. § 10-206 (b) (6), the Association was represented by Anh Pham, the current Secretary of the Association.

II. The Evidence

At the hearing, the Commission's administrative record – CX1 – was admitted in evidence without objection, consisting of pages 1 through 216 and A-1 through A-58. CX1 includes the Opiyos' complaint, the Association's response, the Association's governing documents, correspondence between the Commission staff and the parties, correspondence among the homeowners, the Association's registration with the Commission, hearing subpoenas, and pre-hearing orders.

Following the initial day of hearing, Complainants moved to add their daughter as a party. That motion was denied. The Commission's administrative record relating to that matter was added to CX1, pages A-59 through A-62, without objection, at the second day of hearing.

A. Complainants' Case-in-Chief

The Complainants called Mr. Tang, Mrs. Pham, Mr. Pham, Hebba Hassanein (by telephone), Mr. Ibrahim, Mr. Opiyo, and Wsaida Hassanein.

Mr. Tang testified that he had been President of the Association, but he no longer was. He said he does not know who the current board members are. He testified that at a meeting in April 2005 the homeowners decided to terminate the management company, but he was not sure whether that decision was taken at a board meeting, or whether

there were minutes of the meeting. Mr. Tang also testified that he did not know who hired Hebba Hassanein (Wsaida's sister but not a homeowner within the Association) to assist the Association, that she no longer works for the Association, and that he did not know when she ceased working for the Association. He has no documents showing when she was hired and when she ceased working for the Association.

Mr. Tang testified that he did not remember when any board elections may have been held and he has no paperwork regarding any such elections. When asked when he decided to remove Mr. Opiyo as Treasurer, he said he did not remove Mr. Opiyo, Mr. Ibrahim did. He said he was unable to produce any meeting minutes for the period from January 2005 to date.²

Mrs. Pham testified that she took over as Treasurer because the then-existing Treasurer (Mr. Opiyo) was not acting as Treasurer and would not come to meetings. She said that all owners agreed to hire Hebba Hassanein (see CX1 at 145). When the Treasurer would not write a check to register the Association with the Commission, she contributed personally to raise the money for the registration fee. She said that Mr. Opiyo became Treasurer in December 2005 and that he served in that position until March or May of 2008.

Mr. Pham testified that the President (Mr. Ibrahim) and the Vice President (Mr. Tang) made the decision to remove Mr. Opiyo as Treasurer. A letter to that effect was given to Mr. Tang for delivery to Mr. Opiyo, but it was not delivered.

Mr. Pham testified that he became Secretary in 2007. He said he was able to produce minutes of meetings prior to that time as given to him by Wsaida, and that he could produce minutes of meetings held during his tenure. He produced a folder of documents for inspection by Mr. Opiyo, but Mr. Opiyo claimed they were not genuine and did not offer them in evidence.

Mr. Pham testified that the Association asked Mr. Opiyo to write a check for the Commission registration fee. When no check was written, the other owners contributed personally to the fee.

² Mr. Tang has some difficulty with English. A portion of his testimony was interpreted by Mr. Pham, who speaks both English and Vietnamese. Although Complainants objected to Mr. Pham's serving as an interpreter given his interest in this matter, the Panel swore Mr. Pham to interpret accurately and the Panel has no reason to believe he did not comply with that oath.

Hebba Hassanein was sworn and testified by speaker phone.³ She said that she had no Association documents in her possession and had not had any for over three years. She recalled being at a meeting of homeowners at which they terminated the Association's management agent, but she did not know whether the homeowners who were present were board members. She was hired by her sister and brother-in law (Wsaida Hassanein and Mr. Ibrahim) and by two other homeowners whose names she did not recall but whom she described as Asian. She said the meeting lasted some 45 minutes, at which the homeowners reached a collective decision to self-manage.

She said that although she is an attorney, she never represented the Association in a legal capacity. Instead, she acted as an agent for the Association, referring to her letter dated August 5, 2005 (CX1 at 145). She later terminated her services but could not find her termination letter. She said she turned over all Association documents to her sister and brother-in-law.

When Mr. Ibrahim testified, he was asked why he did not respond to the letter dated March 25, 2008 (CX1 at 148) from the Opiyos' attorney, Jeffrey Van Grack. He answered that Mr. Tang's daughter Julia responded. (See also the email from Wsaida Hassanein dated April 10, 2008 – CX1 at 179 – on which Mr. Van Grack was copied.) When asked why he put Mr. Opiyo's name on the Commission registration form, he said that a County official wrote the name, based on information given to the County by Wsaida Hassanein.

Mr. Ibrahim described the meeting in April 2005, saying three homeowners and Hebba Hassanein were present and that, with Ms. Hassanein's advice, it was decided to remove the management company.

Mr. Opiyo identified himself as an accountant. He said he knew homeowners associations had to file tax returns and he did so for the years 2005, 2006, and 2007. He said that by February 2008 he knew the Association was doing things "illegally" based on statements by the then president (Mr. Ibrahim) and he notified the Association by email. He did not write a check for the Association's registration fee with the

³ Hebba Hassanein was on the Complainants' witness subpoena list, but the Commission apparently was not furnished with a proper address at which to serve a subpoena on her. Just prior to the hearing, the Commission received a letter from Ms. Hassanein saying she had no advance notice of the hearing and could not be available in person. She offered to be available by telephone. At the beginning of the hearing the letter was brought to the parties' attention. Mr. Opiyo initially objected to receiving her testimony by telephone and he asked for a continuance. The Panel denied the continuance, saying the Panel would try the telephone procedure and, if that did not work, subpoena Ms. Hassanein for in-person testimony at a later date. In Complainants' case-in-chief, Mr. Opiyo called Ms. Hassanein as a witness and examined her via speaker phone without further objection. The Panel concludes that any objection to the telephone procedure was waived.

Commission because, in his view, the Association was operating illegally; the Association had not formally approved the payment; he had no bill; and the registration fee was not in the Association's budget and was not one of the items for which homeowners had paid their dues.

On questioning by the Panel, Mr. Opiyo stated that his removal as Treasurer was "illegal" because the homeowners did not follow proper procedures.

Mr. Opiyo acknowledged that he declined mediation.

Mrs. Wsaida Hassanein testified that she was Secretary from December 2006 to December 2007, at which time she was replaced by Mr. Pham.

She testified that she made the call to Site Realty to cancel their management contract, but she did not do so on her own, she did so on behalf of the Association. She said the Association decided to terminate the contract at a meeting at Mr. Tang's house. She said that by depositing Site Realty's refund check into the Association's bank account, the Association confirmed that cancellation of the management contract was properly authorized.

When asked about hiring her sister Hebba, Mrs. Hassanein stated that she did not hire Hebba, the Association did.

When asked who was on the board of directors, she explained that in her mind she did not differentiate between the officers and the board.

Mrs. Hassanein testified that a Commission staff person, Ms. DeJesus, sent an email regarding the requirement to register (CX1 at 169), failure of which would subject the Association to fines. The homeowners then decided at a meeting to proceed with registration. She (Mrs. Hassanein) filled out the registration form and requested a check from Mr. Opiyo, but he refused. She filed the registration form with the Commission and paid the fee herself. In the process, Ms. DeJesus asked her who the treasurer was, Mrs. Hassanein said Mr. Opiyo, and Ms. DeJesus then told Mrs. Hassanein to fill in Mr. Opiyo's name on the registration form, which she did. Mrs. Hassanein has since been reimbursed by everyone except Mr. and Mrs. Opiyo.

Mrs. Hassanein was asked about insurance and she stated that she noticed there were no payments to any insurance company shown in the Association's financial records, even though insurance was a line item on the budget. She said she gave insurance information to Mr. Opiyo, but there still were no payments.

Mrs. Hassanein testified that while she was Secretary, she sent minutes of meetings to everyone, and after Mr. Pham took over she received minutes from him.

At the conclusion of Complainants' case, the Complainants offered in evidence Cmplt. Ex. 1, which was received without objection.

B. Respondent's Case-in-Chief

The Respondent called Mr. Opiyo, and asked him why the Maryland Department of Assessments and Taxation website shows that tax returns for years 2005, 2006 and 2007 were not filed. Mr. Opiyo insisted that he filed those returns. When asked where he filed them, he said, "the IRS."

III. Findings of Fact

1. The Association is a homeowners association within the meaning of Md. Code Ann., Real Prop. § 11B-101 *et seq.*, and is a common ownership community as that term is used in Chapter 10B of the MC Code.⁴

2. Mr. and Mrs. Opiyo own and occupy a unit within the Association.

3. The Association was incorporated as a Maryland non-stock corporation by the developer, M/I Homes of DC, LLC, effective December 1, 2004.

4. The Articles of Incorporation for the Association (CX1 at 1) appoint an initial board of three directors and a corporate resident agent. None of those persons appears to be a homeowner within the Association and the Panel therefore infers that they were designated by the developer.

5. The Association's governing documents contain customary and traditional provisions regarding governance and management of the Association. As relevant here, the governing documents:

a. Require the Association's members to meet annually to elect a three-member board of directors by secret ballot. CX1 at 48, 53

b. Entrust management of the affairs of the Association to the three-member board of directors. CX1 at 51, 66.

c. Require the board of directors to elect a president and a vice president (each of whom must be a director), and a secretary and a treasurer (who need not be directors). CX1 at 55-56.

⁴ Although the Association's status as a homeowners association is stated as a factual finding, that status could be questioned as a legal matter. See the discussion at Part IV-A, below.

d. Require the board of directors to obtain and maintain certain insurance coverages and fidelity bonds. CX1 at 34-35, 54-55.

e. Require that the Association's governing documents and books and records be available for inspection by homeowners. CX1 at 60.

f. Require the Association's books to be audited each year by an independent public accountant. CX1 at 57.

6. The Association's governing documents contain customary and traditional provisions regarding duties of officers. They:

a. Charge the President with presiding at all meetings of the board and seeing that the board's orders and resolutions are carried out. CX1 at 56.

b. Charge the Vice President with acting in the President's place in the President's absence. CX1 at 56.

c. Charge the Secretary with recording votes and keeping minutes of all meetings. CX1 at 57.

d. Charge the Treasurer with receiving and depositing Association funds and disbursing funds as directed by resolution of the board. CX1 at 57.

7. Control of the Association transitioned from the developer to the homeowners in early 2005.

8. At the time of the transition, the Association was professionally managed by Site Realty. CX1 at 145.

9. In or about April 2005, the homeowners collectively decided to terminate Site Realty for financial reasons and become self-managed, and they collectively appointed Hebba Hassanein (Wsaida Hassanein's sister but not a homeowner within the Association) to collect dues and pay certain expenses. CX1 at 145.

10. Hebba Hassanein is not a property manager. Although she is an attorney, she did not intend to act in a legal capacity in undertaking the above-described duties for the Association.

11. Hebba Hassanein resigned from any role with the Association after several months and returned all documents in her possession to the Association. It is unclear from the evidence whether she actually collected any dues or paid any expenses.

12. The Panel takes administrative notice of the records of the Maryland State Department of Assessments and Taxation ("SDAT"), searchable on SDAT's website at http://sdatcert3.resiusa.org/UCC-Charter/CharterSearch_f.aspx (visited on May 21, 2009), and finds that:

a. The Association's Articles of Incorporation were accepted by SDAT as of December 1, 2004.

b. The corporate resident agent named in the Articles of Incorporation resigned effective July 25, 2005 and no successor resident agent was thereafter appointed.

d. The Association has failed to file annual reports (personal property tax returns) for calendar years 2005 through 2009.

e. The Association's Articles of Incorporation were forfeited on October 6, 2006, for failure to file the 2005 personal property tax return.

13. The Association became aware of its forfeited charter status in or about February 2008.

14. As of February 2008 the Association had not filed any annual registrations with the Commission, or paid any registration fees, as required by MC Code § 10B-7.

15. The Association became aware of the Commission's registration requirement in or about February 2008.

16. On or about March 7, 2008, Wsaida Hassanein filed a registration statement with the Commission and personally paid fees for years 2004-2008, totaling \$56.25.

17. Wsaida Hassanein asked Mr. Opiyo to reimburse her out of Association funds under his control, but Mr. Opiyo refused.

18. All the homeowners except Mr. and Mrs. Opiyo have personally reimbursed Wsaida Hassanein for the registration fees.

19. The registration statement as originally filed identified Mr. Opiyo as an Association official, but at Mr. Opiyo's request to the Commission, his name was removed from the statement.

20. In or about April 2008, the homeowners collectively decided to remove Mr. Opiyo as Treasurer and replace him with Mrs. Pham.

21. The homeowners of the Association have never formally held an annual meeting and have never formally elected directors.
22. The homeowners of the Association have never formally held a directors' meeting.
23. The Association has never given formal notices of annual or directors' meetings.
24. The Association has failed to obtain insurance and bonds required by its governing documents.
25. The Association has failed to have its books and records audited annually by an independent public accountant.
26. To the extent the acts and omissions recited above can be attributed to any specific homeowners, those homeowners acted in good faith and not fraudulently, maliciously, or with intent to harm the Association or any other homeowners.
27. The Panel takes administrative notice of the case records of the Maryland Judiciary, searchable at <http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp> (visited on June 18, 2009), and finds that Mr. Opiyo has filed the following lawsuits relating to this matter:
 - a. a suit in Circuit Court, captioned *Opiyo v. Williams*, No. 313520V, to enjoin the Commission from hearing this case;
 - b. a suit in District Court, captioned *Opiyo v. Ibrahim*, No. 0191-2009;
 - c. a suit in District Court, captioned *Opiyo v. Pham*, No. 9808-2009; and
 - d. a suit in District Court, captioned *Opiyo v. Hebba Hassanein*, No. 9809-2009.

IV. Conclusions of Law and Discussion

A. The Association's Status

The Panel's jurisdiction is limited to hearing a "dispute between or among parties," a "dispute" being defined as "any disagreement between 2 or more parties that involves" the authority or failure of a "governing body" to take certain specified actions. For these purposes, a "governing body" is the "board or directors, or any other body authorized by an association document to adopt binding rules and regulations" and "party" includes a governing body or the owner or occupant of a unit. MC Code § 10B-8.

Mr. and Mrs. Opiyo, as unit owners within the Association, are proper parties. The Panel also concludes that the claims presented here – involving among other things the Association’s failure properly conduct an election; to give adequate notice of a meeting or other action; to properly conduct a meeting; to maintain or audit books and records; and to allow inspection of books and records – are well within the Commission’s jurisdiction.

The Association’s status as a party requires some discussion. The Association was originally formed as a Maryland non-stock corporation, but its corporate charter was forfeited in 2006 for failure to file annual reports (personal property tax returns) with SDAT. See Md. Code Ann., Corps. & Ass’ns §§ 1-203, 3-503(c). While the charter remains in a forfeited status, the Association does not exist as a *corporation*. Md. Code, Corps. & Ass’ns, § 3-503(d); *Psychic Research & Devel. Inst. of Maryland, Inc. v. Gutbrodt*, 415 A.2d 611, 613-14 (Md.App. 1980). However, the charter may be revived following the procedures set out in Md. Code Ann., Corps. & Ass’ns § 3-507. Once the charter is revived, acts otherwise properly taken during forfeiture are validated. Md. Code Ann., Corps. & Ass’ns § 3-512; *Arnold Developer, Inc. v. Collins*, 567 A.2d 949, 952 (Md. 1990).

The Association’s *corporate* status does not, in the Panel’s view, affect its status as a *homeowners association*, since homeowners associations are not required to be incorporated. Md. Code Ann., Real Prop. § 11B-101(i) (defining *homeowners association* as “includ[ing] an incorporated or unincorporated association”); MC Code § 10B-2(b) (defining *common ownership community* as including “a development subject to a declaration enforced by a homeowners’ association, as those terms are used in state law”); and MC Code § 10B-8(2) (defining *community association* as the legal entity, incorporated or unincorporated, that is responsible for the governance or common property of a common ownership community”).

In addition, the Association’s governing documents create enforceable contractual obligations among the homeowners. *Kobrine, L.L.C. v. Metzger*, 824 A.2d 1031, 1039-40 (Md. App. 2003). In email correspondence dated February 23, 2008, to other homeowners, Mr. Opiyo expressed the view that the Association’s governing documents no longer exist and are not binding, and that any meeting conducted pursuant to those documents would be illegal. CX1 at 155. The basis for his view is unclear. In any event, the Panel concludes that the documents themselves were clearly intended to survive transition from the developer and they remain in full force and effect.

The Panel therefore concludes that it has jurisdiction over the Association, with authority to issue appropriate orders resolving the disputes presented here.

B. The Association’s Failures

It is clear from the evidence that the Association has not acted in conformity with its governing documents, State law, or the County Code. These failures were the result of ignorance, inattention, or neglect, not intentional misconduct. All homeowners share the blame, including the Complainants. Mr. Opiyo, in particular, is an accountant who testified he was aware of the Association's obligation to file annual tax returns. Yet despite what may be presumed to be his greater knowledge and experience in such matters, he, too, participated in the Association's informal procedures as Treasurer for a two- or three-year period; he neglected to file personal property tax returns with SDAT; he neglected to obtain required insurance; and he neglected to arrange for an annual audit.

The Panel believes that at least some of the blame for the management breakdown in this case also belongs with the developer in creating a homeowners association of such a small size. With so few members, the chances are reduced that a knowledgeable and experienced board could be formed. Engaging professional management or hiring counsel for guidance may not be practical alternatives, since the fees are spread over so few payers. Cost was the very reason why the homeowners decided to terminate the management contract and self-manage.

Various homeowners suggested that Site Realty or Hebba Hassanein was at fault for the management failures. The Panel was not provided with the Site Realty contract and expresses no view as to Site Realty's responsibility. And although Ms. Hassanein did undertake some duties, and she may have given the impression that she was acting as the Association's lawyer, her duties were limited and short-lived. In any event, oversight of management agents remains with the Association. Bylaws §§ 7.01 through 7.03 (CX1 at 54-55).⁵

When these failures came to the Association's attention and efforts were made to address them, Mr. Opiyo became obstructionist. He:

- refused to pay \$56.25 in Association funds to register the Association with the Commission or to reimburse the homeowners who advanced their personal funds;
- demanded documents and records from others that should have been equally available to him;
- failed to attend meetings with other homeowners;

⁵ The Association's former management agents are not "parties" as defined above, although Hebba Hassanein was named as such in the Opiyos' complaint (CX1 at 1). The Panel therefore lacks jurisdiction to enter an order affecting them, even if it were inclined to do so.

- accused his fellow homeowners of fraud and misrepresentation (CX1 at A-41), when the evidence shows that his neighbors were attempting, as best they could, to bring the Association into legal compliance;
- hired his own attorney who in turn made demands and threats that produced only further paralysis (CX1 at 148, 180-181);
- sued his fellow homeowners and Hebba Hassanein;
- rejected mediation despite the Panel's order that he participate; and
- accused County officials of improprieties in connection the filing of the Association's registration form and the handling of his Commission complaint (CX1 at 84, 123, 128, 132).

Ordered to mediation by the Panel chair, Complainants refused to cooperate (CX1 at A-29, A-30). Instead Mr. Opiyo wrote as follows to the Commission:

It appears that our case is intentionally being delayed by the CCOC for reasons that have not been disclosed to us. We are therefore wondering if we need to go to another jurisdiction for redress since we can not receive the proper due process at the CCOC jurisdiction.

CX1 at A-34.

Once a firm date for the hearing was set, Mr. Opiyo went to Circuit Court to enjoin the Commission from proceeding. *Opiyo v. Williams*, Mont. Cnty. Cir. Ct. Civil No. 313510. The injunction request was denied by Order entered May 20, 2009. A motion to reconsider that denial, based on alleged "overwhelming evidence and the existence of fraud," was denied by order entered May 22, 2009.

C. Remedies

Whether or not informal governance served the Association well initially, it no longer does. Although the Complainants are certainly no less at fault than their fellow homeowners, they are entitled to insist on compliance with State and County law and the Association's governing documents. The following Order is designed and intended to bring the Association into compliance.

The Panel is mindful that, despite its Order, it cannot force anyone to accept election as a director or officer. Should an insufficient number of homeowners agree to serve, the Panel's Order may well be frustrated. Should that happen, the Association will fall into further disarray and noncompliance, triggering the need for more extreme and expensive remedies such as appointment of a receiver for the Association. See Md.

Code Ann., Real Prop. § 11B-111.5. The Panel therefore urges the homeowners to set aside any personal differences and cooperate with each other to achieve full compliance with the following Order.

During closing argument, Mr. Opiyo requested an award of compensatory and punitive damages and attorneys' fees. There is no basis for any damage award and the Panel will not award any.

The Panel is retaining jurisdiction over this matter to monitor compliance and to provide any additional direction that may be necessary.

V. Order

Based on the foregoing findings and conclusions, it is by the Panel, this 30th day of July, 2009, ORDERED as follows:

1. The Association must hold a special meeting of all its members no later than September 30, 2009. Anh Pham, as Secretary of the Association, must give written notice of the special meeting in person or by regular mail (not e-mail) to each homeowner at least 15 days but not more than 60 days prior to the special meeting. The notice must state the date, time and place of the special meeting, which must be reasonably convenient to all homeowners. The notice must also state that the purpose of the meeting is to designate a third party to arrange and supervise an annual meeting of homeowners. The Respondent must send a copy of this notice to the Panel at the same time it is sent to the members.
2. All homeowners are strongly encouraged to attend the special meeting in person or by proxy. At the special meeting, the Association must, if approved by majority vote of its members, designate a third party ("Third Party") to arrange and supervise an annual meeting of the Association's homeowners. The Third Party should be an organization with experience in conducting homeowner association meetings and elections, or a homeowner association management company willing to conduct a homeowner association meeting and election. The Third Party must not be affiliated in any way with any homeowners. The Third Party must be hired no later than October 30, 2009.
3. No later than December 30, 2009, the Association must conduct an annual meeting of homeowners under arrangements made by, and under the supervision of, the Third Party, for the purpose of electing three directors of the Association. The Association must provide a copy of the election announcements and forms to the Panel at the same time that they are sent to the members. All homeowners are strongly encouraged to attend the annual meeting in person or by proxy. The Third Party may exercise its discretion in determining the rules and procedures applicable to the election generally, including eligibility to vote; the form and content of proxies, ballots, absentee ballots and notices; and the date, time and place of the election. The Third Party may engage an

attorney to advise it in the discharge of its duties. The Third Party's decision in such matters will be final, unless it is arbitrary, capricious, or contrary to the Association's governing documents or State or County law. In addition to electing three directors, the homeowners may consider any other matters properly brought before them at the annual meeting.

4. In the event that any homeowner disputes the Third Party's decisions as arbitrary, capricious or contrary to law or the governing documents, that homeowner may file a written statement of his or her objections with the Panel and must simultaneously give a copy of that statement to every other homeowner and to the Third Party. The other homeowners have the right to file written response with the Panel within 7 days, and must serve a copy of the response on all other homeowners and on the Third Party.

5. Promptly following the annual meeting, the Association must pay the Third Party's reasonable fees and expenses. Any dispute as to the reasonableness of the Third Party's fees and expenses must be submitted to the Panel for decision.

6. The three elected directors must hold a regular meeting of the Board of Directors immediately following, and at the same place as, the annual meeting of the Members. At the regular meeting, the directors must elect a President and a Vice President (who must be directors), and a Secretary and a Treasurer (who may but need not be directors).

7. Promptly following the election of officers, all homeowners who have possession, custody or control of any books or records belonging to the Association must turn over such books and records to the officers.

8. The directors and officers of the Association must, at the Association's cost and expense, promptly undertake the following matters, in addition to any other duties imposed by law or by the Association's governing documents:

- a. File all required annual reports (personal property tax returns) with SDAT.
- b. Revive the Articles of Incorporation of the Association and appoint a corporate resident agent.
- c. File all required registration statements with the Commission and amend or correct any previously filed statements that contain erroneous information.
- d. Reimburse homeowners who personally paid any Commission registration fees.

e. Obtain all insurance coverages and bonds that are required by the Association's governing documents and such additional insurance coverages as they deem advisable, consistent with the Association's governing documents.

f. File all necessary U.S. and Maryland income tax returns and reports.

g. Arrange for an audit by an independent public accountant of the Association's financial books and records.

h. Provide all homeowners with a full set of Association governing documents, including the minutes of the meetings held pursuant to this Order.

9. The officers and directors may, in their discretion, engage attorneys, accountants, a management company, or other professionals, at the Association's expense, to represent the Association and to assist them in undertaking the above-ordered matters.

10. In the event of dispute to the meaning or implementation of this Order, any homeowner may bring the dispute to the Panel's attention in writing in accordance with the procedures specified in paragraph numbered 4 above.

11. Within 90 days following the date of this Order (or as soon thereafter as the board has been elected), the board must prepare, approve by majority vote, and file with the Commission a detailed, itemized report as to the status of the Association's compliance with the foregoing provisions of this Order.

12. Within 180 days following the date of this Order, the board must report in writing to the Panel on the status of its compliance with Items 3 through 9 of this Order. Upon receipt of the second report, the Panel will consider issuing a final order dismissing this dispute or whether additional action is necessary.

13. It is further ORDERED that all other relief requested in the Complaint, including Complainants' request for return of their \$50.00 filing fee, is DENIED.

14. It is further ORDERED that the Panel will retain jurisdiction over these disputes to ensure that the relief granted is completed in accordance with this Decision and Order.

Panel members Staci Gelfound and Antoinette Negro concur in this decision.

Charles H. Fleischer, Panel Chair